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Of Counsel:

**ROECA, LOUIE & HIRAOKA**

A Limited Liability Law Partnership, LLP

ARTHUR F. ROECA 1717-0

aroeca@rhlaw.com

APRIL LURIA 4687-0

aluria@rhlaw.com

900 Davies Pacific Center

841 Bishop Street

Honolulu, Hawai'i 96813-3917

Telephone: (808) 538-7500

Facsimile: (808) 521-9648

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

DEC 29 2005

at o'clock and M  
SUE BEITIA, CLERK

Attorneys for Defendant

Kay Bauman

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

MATTHEW KUOLT,

Plaintiff,

vs.

STATE OF HAWAI'I, DEPT. OF

PUBLIC SAFETY, MEDICAL

DIRECTOR, KAY BAUMAN, OCCC

MEDICAL UNIT, DOCTOR

ZIENKIEWICZ,

Defendants.

CIVIL NO. CV04 00489 HG KSC

DEFENDANT KAY BAUMAN,

M.D.'S FINAL PRETRIAL

STATEMENT; CERTIFICATE OF  
SERVICE

Final Pretrial Conference: January 5,  
2006

Time: 9:00 a.m.

Judge: Magistrate Kevin S. C. Chang

Trial date: February 7, 2006

DEFENDANT KAY BAUMAN, M.D.'S  
FINAL PRETRIAL STATEMENT

Defendant Kay Bauman, M.D. ("Dr. Bauman"), pursuant to L.R. 16.6, submits the following Pretrial Statement:

A. Party. This pretrial statement is submitted on behalf of Kay Bauman, M.D.

B. Jurisdiction. Jurisdiction is in Federal District Court pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 1983. There is no dispute as to venue in the instant action.

C. Substance of Action. Plaintiff Matthew Kuolt filed this lawsuit against Kay Bauman, M.D. ("Dr. Bauman") and other defendants alleging violations of his civil rights pursuant to 42 U.S.C. §1983 while Plaintiff was in the custody of the State of Hawai'i ("State") Department of Public Safety ("DPS") and an inmate at the Oahu Community Correctional Center ("OCCC") in Oahu, Hawai'i.

Plaintiff's Complaint, filed on August 9, 2004, alleges that Plaintiff was not provided timely or appropriate medical care for a fracture jaw he received during an assault on August 10, 2002. In general, Plaintiff alleges causes of action against Dr. Bauman and other defendants for violations of the Eighth and Fourteenth Amendments for deliberate indifference to his medical needs. Plaintiff

seeks general, special, compensatory and punitive damages. Plaintiff filed this lawsuit against Dr. Bauman individually and in her official capacity as Medical Director of DPS. Specifically, Plaintiff's Complaint alleges that Dr. Bauman was acting under "color of law" because she was an agent of the State and because she was responsible for training and supervising medical personnel and doctors.

Dr. Bauman was and currently is the Medical Director for DPS, however, Dr. Bauman was not personally involved in any alleged denial or delay of Plaintiff's medical care. As Medical Director for DPS, Dr. Bauman is responsible for various administrative and managerial aspects of the medical units of the Hawai'i Prison system and provides direct medical services to inmates.

Dr. Bauman treated Plaintiff one time during a chronic care clinic follow-up visit, which occurred on March 23, 2004. However, this was a regular check up scheduled to assess Plaintiff's HIV and Hepatitis C condition. This was the sole reason for why Dr. Bauman met with Plaintiff. Dr. Bauman did not treat Plaintiff that day for any complaints of any injury stemming from the assault which occurred on August 10, 2002. With the exception of seeing Plaintiff once for this routine visit, Dr. Bauman had no other involvement in any decision regarding Plaintiff's medical care.

D. Undisputed Factual Issues. All factual issues germane to the complaint are in dispute.

E. Disputed Factual Issues.

1. Whether Dr. Bauman violated Plaintiff's rights under the Eighth and Fourteenth Amendments by acting with deliberate indifference to Plaintiff's medical needs.

F. Relief Prayed. Plaintiff has requested general, special, compensatory and punitive damages. The amount of damages, if any, for which the Plaintiffs are entitled is in dispute.

G. Points of Law.

1. The Eleventh Amendment bars suits against state officials in their official capacity. *Doe v. Lawrence Livermore Nat'l Lab*, 131 F.3d 836, 839. (9<sup>th</sup> Cir. 1997).

2. There is no respondeat superior liability under 42 U.S.C. § 1983. *Polk v. County of Dodson*, 454 U.S. 312, 325 (1981).

3. A supervisor is only liable for constitutional violations of subordinates if the supervisor participated in or directed the violations or knew of the violations and failed to act to prevent them. *Taylor v. List*, 880 F.2d 1040, 1045 (9<sup>th</sup> Cir. 1989). A supervisor may also be held liable if he or she implemented "policy so

deficient that the policy itself is a repudiation of constitutional rights and is the moving force of the constitutional violation. *Redman v. County of San Diego*, 942 F.2d 1435, 1466 (9<sup>th</sup> Cir. 1991) (en banc). However, an individual's "general responsibility for supervising the operations of a prison is insufficient to establish personal involvement." *Ouzts v. Cummins*, 825 F.2d 1276, 1277 (8<sup>th</sup> Cir. 1987).

4. Delay of, or interference with, medical treatment can amount to deliberate indifference if the prisoner can show that the delay led to further injury. *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9<sup>th</sup> Cir. 1992) *overruled on other grounds*, *WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9<sup>th</sup> Circuit 1997).

5. To establish an Eighth Amendment violation, a prisoner must satisfy both the objective and subjective components of a two-part test." *Hallett v. Morgan*, 296 F.3d 732, 744 (9<sup>th</sup> Cir. 2002); *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9<sup>th</sup> Cir. 2004). First, the prisoner must demonstrate that the prison official deprived him of the "minimal civilized measure of life's necessities." *Hallett*, *supra* at 396 F.3d at 744. Second, the prisoner must demonstrate that the prison official acted with deliberate indifference in doing so. *Id.*

6. A prison official acts with "deliberate indifference only if the prison official knows of and disregards an excessive risk to inmate health and safety". *Gibson v. County of Washoe, Nevada*, 290 F.3d 1175, 1187 (9<sup>th</sup> cir. 2002).

7. Mere negligence in diagnosing or treating a medical condition, without more, does not violate a prisoner's Eighth Amendment rights. *McGukin v. Smith*, 974 F.2d 1050, 1059 (9<sup>th</sup> Cir. 1992) *overruled on other grounds*, *WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9<sup>th</sup> Circuit 1997).

H. Previous Motions. On October 7, 2005 Dr. Bauman filed a Motion for Summary Judgment seeking dismissal of Plaintiff's Complaint. On October 7, 2005 the State of Hawai'i, Department of Public Safety, OCCC Medical Unit, and Dr. Zienkiewicz filed a Motion for Summary Judgment to which Dr. Bauman filed a written Joinder. Following a hearing on both of the motions, conducted December 12, 2005, Magistrate Kevin S. C. Chang filed a Findings and Recommendation to Grant Defendants' Motion for Summary Judgment.

I. Witnesses to be Called.

Dr. Bauman anticipates calling the following witnesses at trial:

1. Kay Bauman, M.D.  
c/o Roeca Louie & Hiraoka  
841 Bishop Street, Suite 900  
Honolulu, Hawai'i 96813

Defendant. This witness is expected to testify regarding liability and damages.

2. Dr. Zienkiewicz  
c/o Department of the Attorney General, State of Hawai'i  
425 Queen Street  
Honolulu, Hawai'i 96813  
Defendant. This witness is expected to testify regarding liability and damages.

3. Dr. Nguyen  
St. Francis Medical Center  
2230 Liliha  
Honolulu, Hawai'i  
Radiologist. This witness is expected to testify regarding liability and damages.

4. Custodian of Records  
Queen Emma Clinic  
The Queen's Medical Center  
1301 Punchbowl  
Honolulu, Hawai'i  
  
This witness will authenticate certain medical records concerning the Plaintiff.

5. Nurse E. Valente  
c/o Department of the Attorney General, State of Hawai'i  
425 Queen Street  
Honolulu, Hawai'i 96813  
  
This witness is expected to testify regarding liability and damages.

6. Nurse Wanna Bhalang  
c/o Department of the Attorney General, State of Hawai'i  
425 Queen Street  
Honolulu, Hawai'i 96813  
  
This witness is expected to testify regarding liability and damages.

Dr. Bauman reserves the right to call as a witness any individual identified by any other party.

A. Exhibits, Schedules and Summaries.

1. Medical records of Plaintiff.
2. Curriculum Vitae of Kay Bauman, M.D.

B. Further Discovery Motions.

None

C. Stipulations. None to date.

D. Amendments, Dismissals. No amendments are anticipated. Dr.

Bauman will maintain her right to dismissal of all claims against her as set forth in her motion for summary judgment.

E. Settlement Discussions. None.

F. Agreed Statement. Dr. Bauman would be willing to discuss an agreed statement.

G. Bifurcation, Separate Trial of Issues. This case is not in need of bifurcation of issues.

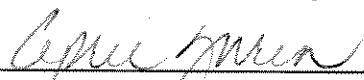
H. Reference to Master or Magistrate Judge. Dr. Bauman has no objection to referring this case to a Magistrate Judge.



- I. Appointment and Limitation of Experts. This case does not lend itself to appointment of a court designated expert.
- J. Trial. This trial is scheduled to begin on February 7, 2006.
- K. Estimate of Trial Time. This trial is expected to last a minimum of 5 days.
- L. Claims of Privilege or Work Product. There are no other matters claimed to be covered by a privilege or work product doctrine.
- M. Miscellaneous. None.

DEC 29 2005

DATED: Honolulu, Hawai'i \_\_\_\_\_.

  
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ARTHUR F. ROECA  
APRIL LURIA  
Attorneys for Defendant Kay Bauman, M.D.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

MATTHEW KUOLT,	)	CIVIL NO. CV04 00489 HG KSC
	)	
Plaintiff,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	
	)	
STATE OF HAWAI'I, DEPT. OF	)	
PUBLIC SAFETY, MEDICAL	)	
DIRECTOR, KAY BAUMAN, OCCC	)	
MEDICAL UNIT, DOCTOR	)	
ZIENKIEWICZ,	)	
	)	
Defendants.	)	
	)	

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was duly served by mail [M], hand-delivery [HD] or facsimile transmission [F] to the following at their last known address:

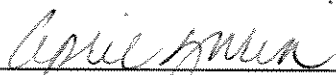
MATTHEW KUOLT [M]  
#A0235531  
Tallahatchie County Correctional Facility  
P. O. Box 388  
Tutwiler, MS 38963

Plaintiff Pro Se

CINDY S. INOUE, ESQ. [H] [10]  
KENDALL J. MOSER, ESQ.  
Deputy Attorney General  
Department of the Attorney General  
Civil Rights Litigation Division  
425 Queen Street  
Honolulu, Hawai'i 96813

Attorneys for State of Hawai'i, Department of Public Safety,  
OCCC Medical Unit, and Dr. Zienkiewicz

DATED: Honolulu, Hawai'i, DEC 29 2005.

  
\_\_\_\_\_  
ARTHUR F. ROECA  
APRIL LURIA  
Attorneys for Defendant  
Kay Bauman